IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 732 OF 2006
WITH
CRIMINAL APPLICATION NO. 1355 OF 2006

Shri Girish Raghunath Mehta Indian National Aged 46 yrs. 504, Rama's Tower, S.N. Road, Tambenagar, Mulund (West), presently undergoing sentence at Kolhapur Central Prison, Kolhapur ..Appellant
(Org. Accd. No.1.)

Versus

1. The Inspector of Customs NCCP Customs, Mumbai
2. The State of Maharashtra ..Respondents

Mr. A.P. Mundargi, Senior Advocate with Mr.Ayyaz Khan for appellant.
Mr. R.Y. Mirza for respondent no.1.
Mr. A.S. Shitole, APP for respondent no.2-State.

CORAM: B.H. MARLAPALLE,J.

Reserved on : September 07, 2007.

Pronounced on : September 12, 2007.

JUDGMENT:

1. This appeal arises from the order of conviction and sentence passed in NDPS Special Case No. 84 of 2004 by the learned Special Judge on

19/7/2006. Two accused were put on trial and present appellant was accused no.1 who has been convicted for the offence of illegal possession of commercial quantity of poppy straw powder and fragments punishable under Section 15 read with Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NPDS Act) and sentenced to suffer 10 years RI and to pay fine of Rs.1,00,000/- in default RI for one year more. He has been further convicted for the offence of illegal sale transaction of 30 kgs. poppy straw powder with abetment with accused no.2 Karim Patel i.e. under Section 15 read with Section 8(c) of the NDPS Act and sentenced to suffer RI for four years and to pay fine of Rs.20,000/- in default RI for six months more. He also has been convicted for the offence of illegal sale of 30 kgs. poppy straw powder to accused no.2 Karim Patel who was not possessing valid license and permit i.e. under Section 15 read with Section 8(c) of the NDPS Act and sentenced to suffer RI for four years and to pay fine of Rs.20,000/- in default RI for six months more. The appellant came to be acquitted for the offences punishable 465, 467, 468 and 471 of IPC. The substantive sentences have been directed to

run concurrently.

2. As per the prosecution case the respondent no.1 received intelligence information on 26/2/2004 that accused no.1 was selling crushed opium poppy straw without any bills on cash basis from his premises at 6 Pravin Chambers, Keshvji Naik Road, Mumbai and that the accused no.2 was likely to purchase 30 kgs. of poppy straw at about 2.00 p.m. on that day. Accordingly a raid was arranged and the accused no.2 was allegedly apprehended with 30 kgs. of poppy straw. On the next day the premises of the appellant were searched and some documents were recovered i.e. registers etc. and about 5652 kgs. of poppy straw was seized from the premises in his possession in 6 Pravin Chambers. Statements of the accused were recorded under Section 67 of the NDPS Act. During the course of inquiry the respondent no.1 had summoned a number of witnesses and their statements were also recorded under Section 67 of the NDPS Act and on completion of investigation, a complaint was filed by the respondent no.1 against both the accused and charges were framed subsequently.

3. During the trial, the prosecution examined in all 11 witnesses and four of them, namely, PW 1 Bhaskar Dodayya Shetty, PW 2 Gerard Vidiaraj Joseph, PW 3 Mrs. Saroj Shankar Sakpal and PW 5 Canute Menezes were the Investigating Officers, whereas PW 4 Vijaykumar Shantaram Sahasane and PW 6 Anant Krishna Nair were the Superintendents of Custom, PW 7 Subhashchand Shantilal Surana and PW 8 Shailendra Bahaddur were the Assistant Chemical Examiners. PW 9 Dhiren Laxmichand Mota was the landlord of the premises which were under the possession of accused no.1 as a licensee/tenant and PW 11 Pramod Dhondu Rane was PSI State Excise, Mumbai. The statements of the accused under Section 313 of Cr.P.C. were recorded. The learned Special Judge convicted the appellant mainly on the following three grounds:-

(a) for the illegal sale of 30 kgs. of poppy straw to accused no.2;

(b) for the illegal sale of 30 kgs. of poppy straw to accused no.2 who did not hold a license to purchase such a substance and

(c) for possession of 5652 Kgs. of poppy straw alleged to have been recovered from Shop No.1, Pravin Chambers whereas the license of the appellant-accused no.1 indicated that he was carrying on the business from Shop No.6 of Pravin Chambers.

. On receiving the intelligence information and having entered the same in the register on 26/2/2004, the officers of the custom department reached in the vicinity of Pravin Chambers building and were waiting on the road nearby the said building with panchas and after some time one person with a gunny bag containing material was seen coming out of the said shop and he was proceeding by road towards Masjid Railway Station. He was followed for some distance and was intercepted by the raiding party. He was inquired by the officers about his name and other details and regarding the contents of the gunny bag. Thereupon the said person disclosed his name as Karim Ahmed Miya Patel (Accused NO.2) and informed that the gunny bag was containing 30 kgs. of poppy straw powder which he admitted that he had purchased without bills and on cash payment of Rs.5400/- (at a rate of Rs.180/- per kg.). Accused

No.2 was informed by the officers about the intelligence and intention to conduct his search as well as the search of the gunny bag and he was also informed about his right under Section 50 of the NDPS Act for being searched before the Gazetted Officer of his choice. It is claimed that Karim Patel declined to exercise the said right and, therefore, he was taken to the Shop from which he was seen coming out situated in Pravin Chambers. When the raiding party entered the said shop a man and a lady were found present in the said shop and on inquiry by the officer, the man disclosed his name as Girish Raghunath Mehta (Accused No.1) and informed that he was the proprietor of the firm by name M/s. Mahakali Enterpriese and the lady disclosed her name as Leena Narayan Jagtap working as Manager of the said firm. Thereupon the officers informed both of them that Karim Patel (Accused No.2) was intercepted by them along with gunny bag containing poppy straw powder purchased from accused no.1 and was intercepted on the road when he was approaching the Masjid Railway Station and that he was brought back to the shop for search of the gunny bag which he was with him. Accused no.2 was asked to open the gunny bag and

brownish coloured powder packed in large polythene bag was taken out. A small quantity of the powder was tested on the Field Testing Kit and the result was positive for the presence of opium. The powder was weighed and it was found to be 30 kgs. in weight. Thereupon three samples each weighing 24 gms. were collected and sealed and the polythene bag containing remaining quantity of powder was also sealed and kept in the same gunny bag which was tied with string. A label with signatures of both panchas and officer Shetty and accused no.2 was affixed on the said gunny bag. Accused no.2 identified accused no.1 as the person who sold him the seized powder of 30 kgs. for an amount of Rs.5400/- without bills and on cash payment but by making a fake entry in his accounts. The raiding party then informed the accused no.1 about the intelligence received and their intention to conduct search of his shop. He was also informed about his rights under Section 50 of the NDPS Act and he declined to exercise the said rights. Thereupon the search was conducted and the inventory was sealed. On the next day when the inventory was counted, they found that 108 gunny bags containing brown coloured powder weighing 4227.80 kgs. and 30 gunny bags

containing 1425 kgs. brown coloured fragments of poppy pieces were seized and those bags were serially numbered as 1 to 144. Three samples were drawn from the powder and three representative samples were collected from fragments of poppy straw. Thus the total number of samples collected and sealed were 21 and an amount of Rs.13,115/- was also collected from the said shop. It appears the raiding party on 26/2/2004 also went to Flat No.504 in Rama Tower, Mulund (W) and the said premises were searched in the presence of Pranav Mehta and Sangita Mehta, son and wife of accused no.1 respectively and Jay Mehta the other son of accused no.1 and the raiding party seized an amount of Rs.1,74,000/- in cash from the said premises. It appears accused no.2, in his statement, also informed the raiding party that he had purchased poppy straw power about 10 to 15 kgs. at several occasion from accused no.1 and sold the same in the pack of 450 gms. for Rs.180/- each to the number of customers and also sold packs of 25 gms. for Rs.60/- each to truck drivers.

4. Through the evidence of PW 11 Excise Inspector Rane, the registers maintained by accused no.1 and

marked as Article Nos.7 and 8 were brought on record and page no.33 of Article No.8 was marked at Exh.92 and page no.71 in Article 9 was marked as Exh.93. As per PW 1 Shetty these registers and other documents were enlisted in Annexure "A" of seizure panchanama at Exh.10 which was signed by accused no.1 and below his signature he had written the date as 27/2/2004. Signatures of both the panchas with the same date were also noted. The License Exh.101 in the name of M/s. Mahakali Enterprises was also placed on record and as per the said license accused no.1 was authorised to possess and sale poppy straw at his shop and/or warehouse and the said license permitted to store 20,000 kgs. of poppy straw at any time. Though it had come in the evidence of PW 11 Rane that during his visit to the licensed premises of accused no.1 he had not reported any illegality committed by accused no.1 but the other evidence from the registers indicated that the material purchased by the accused no.2 was not entered therein and no bills were issued to accused no.2 by accused no.1. Having assessed the evidence of the prosecution on the first two charges, namely, the illegal sale of 30 kgs. of poppy straw to accused no.2 and such illegal sale to accused no.2 who

did not have a license to purchase poppy straw, the learned Senior Counsel for the accused no.1-appellant has mainly concentrated his challenge in the appeal to the conviction under the third charge.

5. It is submitted by Mr. Mundargi that the conviction of the accused no.1 for the offence of illegal possession of commercial quantity of poppy straw powder and fragments is clearly unsustainable and as per him the seized stock weighing about 5652 kgs. was recovered from the same premises which were licensed premises and the seized stock was not in any other location for which there was no license with the accused no.1. It was submitted that the whole confusion arose on account of the addresses furnished by the accused no.1 erroneously/inadvertantly to the Excise Authorities and various other statutory authorities. Accused no.1 has brought on record additional evidence by way of approved site plan and which was submitted to the Inspector, State Excise, Mumbai while applying for license. The licensed premises are Gala No.1 at 6 Pravin Chambers. It was further urged that accused no.1 does not know reading and writing of English language and while submitting

applications for license or renewal of license or submitting returns he had to always depend on someone else or at times instead of writing the address of the licensed premises in hand, he got made a rubber stamp for the same and the address used to be affixed by the stamp on the returns/license form etc.

6. PW 4 Vijaykumar Sahasane, Superintendent of Custom, in his depositions stated before the trial court that the intelligence received by him indicated that a large quantity of poppy straw and crushed poppy powder were being sold on a large basis illegally without bills and on cash basis by Mr.Girish Mehta from his shop at Shop No.1, Pravin Chambers, 6th Keshavji Naik Road, Mumbai - 400 009. The information thus received was regarding the illegal sale on large scale of poppy straw and crushed poppy powder without issuing bills and on cash basis by the accused no.1 and the premises from which the sale was being carried out were specifically stated to be Shop No.1, Pravin Chambers, 6th Keshavji Naik Road, Mumbai 400 009. PW 11 Pramod Rane, PSI of State Excise, Mumbai in his cross-examination admitted that the application submitted by the accused no.1 for getting license for

sale of poppy straw was submitted by the Excise Department to the Collector's office and the application of the firm of accused no.1 i.e. Mahakali Enterprises was verified by the Excise Department and thereafter license was issued. He admitted that the plan of the premises is to be approved by the Excise Department and the license was issued after approval of the plan. He also stated that the license Article 32 was valid for the period from 1/4/2003 till 31/3/2004 and it was issued for sale of poppy straw. He further stated that the licensed premises address was Shop No.6, Pravin Chambers, Keshavji Naik Road, Mumbai -9 and he had visited the said premises on three different occasions for verification of the address for the purpose of license.

. PW 9 Dhiren Mota is the owner of Pravin Chambers and he stated that Pravin Chambers is building No.6 and in the same building there are four shops, two godowns on the ground floor and there are offices on the 1st, 2nd and 3rd floor. He further stated that in Pravin Chambers Building no shop is numbered as Shop No.6. He further emphasised that godown no.1 is given on rent to M/s.Jeevraj

Ranchhoddas and in the year 1981-82 his father had purchased the said building in his name. He also admitted that M/s. Jeevraj Ranchhoddas was tenant of previous landlord and after purchasing the said building continued to be his tenant. In his cross-examination by the learned Advocate for accused no.1, he stated that he did not recollect the name of the tenant in shop no.1 situate on the ground floor of Pravin Chambers. Thus, the evidence of the prosecution itself went to show that the accused no.1 was the tenant of godown no.1 and not of shop no.1 or shop no.6 located on the ground floor of Pravin Chambers. In fact, as per the landlord there was no shop numbered as shop no.6 in the said building on the ground floor. He clearly stated that on the ground floor, there are four shops and two godowns and godown no.1 was in possession of the accused no.1. Mr.Mundargi rightly referred to the documents at Exhs.96, 97, 98 and pointed out that the confusion in the address or the exact place of the licensed premises arose on account of the writings on these documents and more particularly the address of the licensed premises in different forms. In Exh.96 which had forwarded an application for transport of 6000

kgs. of poppy straw stated the address of M/s.Mahakali Enterprises as under:-

"M/s. Mahakali Enterprises
C/o Jeevraj Ranchhoddas Shop
No.6 Pravin Chambers
Keshavji Naik Road,
Chinchbunder, Mumbai - 400 009."

Whereas the application attached to this letter addressed to the Collector had given the following address of the licensed premises which appeared to be a rubber stamp of the address:-

"Mahakali Enterprises
C/o. Jeevraj Ranchhoddas
Shop No.6, Pravin Chambers
Keshavji Naik Road,
Chinch Bunder, Mumbai - 400 009."

In the subsequent letter addressed to the Collector, again the address of the licensed premises was stated as under:-

"Mahakali Enterprises
C/o. Jeevraj Ranchhoddas Shop
No.6, Pravin Chambers
Keshavji Naik Road
Chinchbunder, Mumbai - 400 009."

However, the application for import pass forwarded by the said letter furnished the address of Mahakali Enterprises as under:-

"Mahakali Enterprises
C/o. Jeevraj Ranchhoddas
Shop No.6, Pravin Chambers
Keshvaji Naik Road
Chinch Bunder, Mumbai-400 009."

7. Mr. Mundargi, therefore, rightly pointed out that the whole confusion arose by wrongly describing the address of the licensee firm i.e. Mahakali Enterprises. The submissions of Mr. Mundargi will have to be accepted and it is important to note the consequence of writing the address as under:-

(a) Mahakali Enterprises
C/o.Jeevraj Ranchhoddas Shop
No.6, Pravin Chambers

(b) Mahakali Enterprises
C/o. Jeevraj Ranchhoddas
Shop No.6, Pravin Chambers

The address at (a) above clearly went to show that Mahakali Enterprises was being run from Jeevraj Ranchhoddas Shop and not Shop No.6, Pravin Chambers, whereas the address at (b) above indicated that it was being run from the premises of Jeevraj Ranchhoddas in

Shop No.6, Pravin Chambers. It is apparent that the State Excise Authority did not notice the implications of such an aberration which was obviously not deliberate. It appears even the accused no.1 could never have the capacity to understand the implications of writing the address of his firm as in (a) and (b) above. Having regards to the testimony of the landlord PW 9, it is clear that the firm of accused no.1 i.e. Mahakali Enterprises was located in Jeevraj Ranchhoddas Shop which was part of the building by name Pravin Chambers and it was listed as Building No.6. There is no doubt that the stock seized from the premises of the accused no.1 were within the license capacity and he has been held guilty of illegal possession of stock only on the ground that the stocks were seized from a different premises than the licensed premises. The trial court was certainly in manifest error in appreciating this evidence and holding the accused no.1 guilty on the first count i.e. illegal possession of commercial quantity of poppy straw powder and fragments and thus committing an offence punishable under Section 15 read with Section 8(c) of the NDPS Act. It is not the case of the prosecution that at any time the physical

verification of the licensed premises was done and it was noticed that licensed premises so verified were different from the premises from where the poppy straw stocks were seized. The conviction of the accused no.1 on this count, therefore, is unsustainable and the same is required to be quashed and set aside.

8. So far as the sentence awarded to the appellant-accused no.1 for his conviction under Section 15 read with Section 8(c) of the NDPS Act for illegal sale transaction of 30 kgs. of poppy straw to accused no.2 at the first instance and secondly the said transaction to accused no.2 who did not possess a license to purchase or possess or sale poppy straw is concerned, the evidence brought on record by the prosecution clearly indicated that the accused no.1 engaged in illegal transactions of sale of poppy straw i.e. on payment of cash and without issuing bills on number of occasions and the registers placed before the court proved this beyond any doubt. It was not the only transaction that accused no.1 had made with accused no.2 without issuing the bills or/and on receiving cash payments and without making entry in the registers which were required to be maintained

under the conditions of license. At the same time, it is also clear from the evidence brought on record by the prosecution that the quantity of poppy straw in all these illegal transactions was not a commercial quantity and it was on all the occasions less than a commercial quantity.

9. Hence, this appeal succeeds partly. The order of conviction and sentence passed against accused no.1 for the offence punishable under Section 15 read with Section 8(c) of the NDPS Act for illegal possession of commercial quantity of poppy straw powder and fragments is hereby quashed and set aside, whereas the order of conviction and sentence passed under Section 15 read with Section 8(c) of the NDPS Act for the offence of illegal sale transaction of 30 kgs. poppy straw powder with abetment with accused no.2 as well as the order of conviction and sentence passed under Section 15 read with Section 8(c) of the NDPS Act for the offence of illegal sale of 30 kgs. poppy straw powder to accused no.2 - Karim Patel who was not possessing valid license and permit is hereby confirmed.

10. In view of the disposal of the main appeal, Criminal Application No.1355 of 2006 for bail does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)